

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 14, 2010

In the Matter of MURPHY, Minors.

No. 297101
Oakland Circuit Court
Family Division
LC No. 07-738668-NA

Before: TALBOT, P.J., and METER and DONOFRIO, JJ.

PER CURIAM.

S. C. Murphy contests the termination of his parental rights, asserting the absence of clear and convincing evidence to demonstrate any statutory ground for the termination and that the termination of his parental rights was contrary to the best interests of the minor children. We affirm.

“In order to terminate parental rights, the trial court must find that at least one of the statutory grounds of MCL 712A.19b . . . , has been met by clear and convincing evidence.”¹ The trial court’s decision is reviewed for clear error.² In applying the clearly erroneous standard, the Court should recognize the special opportunity the trial court has to assess the credibility of the witness.³ “If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.”⁴

Murphy’s parental rights were terminated in accordance with MCL 712A.19b(3)(c)(i) [condition that led to adjudication continues to exist with no reasonable likelihood of rectification], (g) [failure to provide proper care or custody], (j) [reasonable likelihood of harm is child is returned to parent], and (k)(ii) [parental sexual abuse of sibling]. Murphy’s sexual abuse of his teenaged stepdaughter led to the involvement of DHS and the adjudication of the minor children involved in this appeal. The trial court heard extensive testimony from several

¹ *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991).

² *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

³ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

⁴ MCL 712A.19(b)(5).

professionals, Murphy and his ex-wife (the minor children's mother) and was able to directly observe and question the witnesses.

Although Murphy complied with his parenting agreement by completing psychological and sexual offender assessments and attending therapy sessions and parenting classes, he failed to convince the trial court that he actually benefited from his participation in these services. At the outset, Murphy refused to cooperate with the sexual offender assessment fearing exposure to additional criminal charges. Murphy failed to provide pay stubs to verify his employment and did not pay his required support obligations despite the trial court setting of a minimum payment amount. Murphy also failed to provide letters of apology to the victims of his sexual abuse. The trial court indicated significant concerns pertaining to Murphy's failure to take responsibility for his actions. Murphy initially denied the sexual abuse allegations and later implied that he blamed his ex-wife for his behavior due to his lack of sexual satisfaction in the marriage. Murphy also contended that his stepdaughter enjoyed the sexual contact, denied the effect and impropriety of comments made to his stepdaughter, and failed to comprehend the significant impact of his actions on the entire family, including his two minor biological children. The trial court noted Murphy's placement of his own well being over that of the minor children. Examples of Murphy's self-prioritization included: (a) his removal of all funds from the family bank account when the molestation allegations arose and subsequent replacement of only half of the funds even though his wife had three children to support, (b) his failure to pay child support in accordance with the trial court's minimum requirement of \$100 a week, and (c) initial lack of cooperation in completing the sexual offender assessment due to fear of consequences to himself rather than to facilitate reunification with his children.

The therapist for the minor children testified that they did not want to have contact with their father and of concerns regarding the effect of Murphy's sexual abuse of his stepdaughter on all members of the family. Although several professionals testified that Murphy benefited from the services offered, the trial court disagreed after weighing all of the testimony. The trial court found that Murphy had made minimal progress over the three years the matter had been pending and was not convinced that Murphy would be able to make sufficient progress in a reasonable period of time. We find no clear error in the trial court's determination that the statutory grounds found in MCL 712A.19b(3)(c)(i), (g), (j), and (k)(ii) were established by clear and convincing evidence.

Murphy also contends that he was not provided an opportunity to visit with the minor children and blames DHS and the minor children's therapist. But it was Murphy's own actions that precluded visitation. For the first year this action was pending, Murphy was in jail and refused to cooperate with the sexual offender assessment. Although Murphy may have written the required letters of apology to his victims, he did not secure their delivery. Murphy failed to demonstrate a lack of concern or interest by never inquiring about the well being of the minor children, despite knowing that one of his children was undergoing medical evaluation. Murphy did not adequately or timely demonstrate his acceptance of responsibility for his inappropriate sexual behavior with his stepdaughter and the minor children feared their father and were adamantly opposed to visitation with him.

We find that the trial court did not clearly err in its best interests determination. Three years had elapsed since respondent had seen the minor children after he sexually molested their half-sister. After taking extensive testimony, the trial court concluded that Murphy had

demonstrated minimal progress during the pendency of the action and that the minor children should not be required to wait any longer for their father to show that he accepted responsibility for his actions and that he would make the minor children a priority.

Affirmed.

/s/ Michael J. Talbot

/s/ Patrick M. Meter

/s/ Pat M. Donofrio